

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CURTIS SMITH,)	CASE NO. 4:09 CV 2565
)	
Plaintiff,)	JUDGE JOHN R. ADAMS
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
UNITED STATES DEPARTMENT OF)	
JUSTICE, et al.,)	
)	
Defendants.)	

On November 2, 2009, Plaintiff pro se Curtis Smith, an inmate at the Federal Correctional Institution at Elkton (FCI Elkton), filed this *in forma pauperis* civil rights action against the United States Department of Justice, the Federal Bureau of Prisons, and 16 individual defendants. The complaint sets forth allegations concerning various aspects of the conditions of confinement under which Smith is being held at FCI Elkton.

A prisoner is prohibited from bringing a civil action or appealing a judgment in a civil action in forma pauperis if, on three or more prior occasions, the prisoner brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Smith has on at least five occasions filed a civil action failing to state a claim in the federal courts. See, *Smith v. Rodgon*, N.D. Illinois Case No. 1:09 CV 6628; *Smith v. Finn*, N.D. Illinois Case No. 1:09 CV 6627; *Smith v. Kister*, N.D. Illinois Case No. 1:09 CV 6626; *Smith v. Tomaska*, N.D. Illinois Case No. 1:07 CV 5794; and *Smith v. Hibbler*, N.D. Illinois Case No. 1:07 CV 5793. The complaint in the instant action does not contain allegations reasonably suggesting he is in imminent danger of serious physical injury. He may thus not proceed *in forma pauperis*. See *Mitchell v. Tennessee*, No. 03-5816, 2004 WL 193153 at *1 (6th Cir. Jan. 30, 2004).

Accordingly, this action is dismissed without prejudice. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Date: April 12, 2010

S/John R. Adams
JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE